The Sale Agreement was thus made by the objector for the benefit of Federal Auto which, at the time of execution, was not yet in existence. The objector cannot claim ownership as the goods are meant for Federal Auto. Nor can the ownership in the property pass to Federal Auto on the authority of *Natal Land and Colonization Company, Limited* v. *Pauline Colliery and Development Syndicate, Limited.*[3]

Where property of a judgment debtor has been attached by a judgment creditor, an objector in objection proceedings must show that he is the lawful owner of the property at time of attachment. If such ownership has been obtained by purchase or otherwise, the court must be satisfied that the transaction is *bona fide*. In determining whether the transaction is *bona fide*, it should be decided on the facts of each particular case. In the present case, the objector has failed to show that the purchase is *bona fide*. As such, the objection has been correctly dismissed.

In conclusion, although the Registrar has made a mistake in stating that the attachment was effected on October 28, 1975 instead of November 28, 1975, his decision in dismissing the objection is correct, having regards to the facts of this particular case.

This appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Loke Kok Cheong; Sothi & Ang.*

EILEEN KUOK v. PENGERUSI, PERBADANAN KEMAJUAN BUKIT FRASER, PAHANG

[O.C.J. (Salleh Abas F.J.) March 7, 1979]
[Raub — Originating Motion No. 4 of 1977]

Local Government — Rating — Annual notice — Rent property could command — Actual Rent — Town Board Enactment (F.M.S. Cap. 137), s. 44(1).

In this case the respondent had raised the annual value of the premises for purposes of assessment to $17,400. The appellant objected and appealed against the assessment. The appeal was based on the ground that the premises were let for only $4,200 per annum.

Held: (1) there was evidence that the premises could be let for more than $4,200 per annum and the failure of the respondent to assess the premises at that amount was not contrary to the provisions of the Town Board Enactment;

(2) the respondent was justified in assessing the premises at $17,400 instead of $4,200.

Cases referred to:-

(1) *Robinson Bros. (Breweries) Ltd.* v. *Houghton & Chester-le-Street Assessment Committee* [1937] 2 K.B. 445.

(2) *Poplar Assessment Committee* v. *Roberts* [1922] A.C. 93, 118.

(3) *Tiong Hin Realty Sdn. Bhd.* v. *Chairman, Majlis Bandar, Kuantan* [1975] 1 M.L.J. 215.

ORIGINATING MOTION.

J.J. Puthucheary for the appellant.

P.S. Abraham for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J.: This is an appeal under section 44(1) of the Town Board Enactment (F.M.S. Cap 137). The respondent is the Chairman of Perbadanan Kemajuan Bukit Fraser, Pahang (for the purpose of this judgment referred to as the "Perbadanan"). It is a statutory body established under Pahang Enactment No. 4 of 1968, entrusted with the duty "to promote residential, industrial and commercial development or any form of tourist attraction amenities within the Fraser Hill area" (section 3(1)). The Town Board area of the Fraser's Hill is placed under the jurisdiction of the Perbadanan, and the Town Board Enactment of F.M.S. Cap. 137 is made applicable to the Perbadanan with certain appropriate modifications (section 11).

The appellant is the registered proprietor of land comprised under Certificate of Title No. 3201, Lot 219, Mukim of Tras. A cottage known as Muar Cottage is built on this land. The property is within the area of the Town Board of Fraser's Hill which is under the jurisdiction of the respondent. The property is rented out by the appellant to one Mrs. P. Beewick on a yearly rental of $4,200. In an assessment exercise involving properties in the Town Board area of Fraser's Hill on November 12, 1976, the respondent raised the annual value of Muar Cottage to $19,000, and later on objection by the appellant, the annual value was reduced to $17,400. The appellant being still dissatisfied with the assessment, appealed to the court against the respondent's decision in assessing the annual value of Muar Cottage at $17,400 instead of at $4,200. The reduction from $19,000 to $17,400 represented the value of furniture which had to be excluded; otherwise the valuation may not be legal and proper.

The appeal is based on the ground that the respondent had acted contrary to the provisions of the Town Board Enactment by assessing Muar Cottage at $17,000 per annum when the rent received is only $4,200 per annum.

The properties involved in this assessment exercise fall into three categories —

(1) premises run like hotels or guest houses such as Government guest houses;

(2) dwelling houses which are owner-occupied; and

(3) dwelling houses which are rented out on yearly basis.

According to Wan Malik bin Wan Mohamed, whose expert opinion the respondent relied on in the assessment exercise, Muar Cottage is included in category (3). I agree with the valuer as to the exclusion of properties in categories (1) and (2) from comparison with Muar Cottage. Hotels and Guest Houses or Rest Houses are not rented on yearly basis but on daily and room to room basis. As to the owner-occupied dwelling houses, I accept the evidence of Wan Malik, that for such premises the estimated gross annual rental which they might reasonably be expected to let would be less than that which might be expected of a rented-out premises like Muar Cottage. I find nothing wrong in this approach. If at all, it is in fact beneficial to the appellant. Examination of the list of owner-occupied premises which is annexed to Wan Malik's affidavit of July 1, 1978, reveals the

following facts. Two premises which are vacant lots are valued at $3,800 and $4,000 respectively. 3 T.O.L. properties are each valued at $900. A garage is valued at $200 and a shop plus accommodation is valued at $1,200. The rest of the properties, apart from a flower shed valued at $9,600, are variously valued at $18,000, $19,200, $21,600 and $46,800. Of these properties, at least two holdings each with 3 bedrooms are comparable to Muar Cottage. One is valued at $18,000 and the other at $19,200. It is thus clear that even the valuation of $17,400 for Muar Cottage which is a rented premises (instead of being valued at a higher figure) is lower than that of any of the owner-occupied premises involved in the exercise, although facilities available at those premises are comparable to those available at Muar Cottage.

However, owner-occupied premises are not taken by the valuer as a yardstick to arrive at the annual value of the appellant's property. What the valuer did in this case is to value Muar Cottage on the basis of comparison with properties rented out on a yearly basis. There are four such properties altogether:—

(i) Mentakab with 6 bed-rooms, rented out at $2,100 per month;

(ii) Jelai with 3 bed-rooms, rented out to MAS at $1,600 per month;

(iii) Berinchang with 3 bed-rooms, rented out to MTC at $1,500 per month; and

(iv) Jerantut with 4 bed-rooms, rented out to L.L.N. at $1,000 per month.

Having regard to the number of bedrooms, only Mentakab and Jerantut are comparable to Muar Cottage, which has 3 bedrooms. Indeed Muar Cottage is even better because it has an extra room which is used as an office. It is on the basis of comparison with Jelai and Berinchang that Muar Cottage was valued at $17,400. Counsel for the appellant submitted that Jelai and Berinchang are not true comparison because they are let out to companies, MAS and MTC respectively, as holiday bungalows for their staff, whereas Muar Cottage is let out to a private individual for residential purposes. Therefore, because of the difference as regards tenants and use, the annual value of Muar Cottage should be lower. In my judgment, I cannot see any logic why an annual value of a property should vary according to whether it is rented to a corporate entity or to a private individual, nor could I see any justification for the increase or decrease of the valuation on account of the use of the property to which the tenant applies. In my judgment, this fact has no bearing at all. Such distinction between use as a holiday bungalow by the tenant and use as his residence would not affect the question of estimated gross rent which the property is reasonably expected to let. This estimated gross rent is what a hypothetical landlord and hypothetical tenant would agree between themselves by the higgling of the market; the question of use of the premises by the tenant being irrelevant; but what is the premises is relevant. Thus, a dwelling house must be assessed as a dwelling house, whether it be rented to an individual for his personal accommodation or to a company for the accommodation of its staff, be they on duty or on holiday. These two bungalows Jelai and Berinchang are used by MAS and MTC as holiday bungalows for their staff. To my mind, I agree with the valuer that such use is residential use much the same way as that of Muar Cottage. The only difference if at all is that in the case of Muar Cottage the tenant is a private individual, whereas in the case of Jelai and Berinchang the tenants are corporate entities. Such difference has scarcely affected what the estimated gross annual rent at which Muar Cottage might reasonably be expected to let from year to year.

Counsel for the appellant referred me to the principle of *rebus sic stantibus*, but this principle is nothing more than that the property must be valued as it exists at the time when the assessment is made with all the then existing circumstances. Thus it follows that in assessing the gross rent of a hereditaments its actual physical condition and their continuance together with their advantages and disadvantages must be presumed. In my view, I do not consider the fact that Muar Cottage is let out to a private individual at a lower rental for his private residence than Jelai and Berinchang as constituting a distinct mode of use coming within the principle. Indeed if it were so, the annual value under section 2 would depend upon the will of the proprietor; but the law is not so, nor does assessment depend upon the will of the tenant. The whole question is what rent the property in question, existing as it does, could command — i.e. the rent obtainable at a notional agreement between a hypothetical landlord and hypothetical tenant. Thus a dwelling-house should be valued as such, and not at a higher value which it would possess if converted into a shop, nor a lower value if it is converted to some other humble use. Thus *rebus sic stantibus* does not help the appellant's case any further. The *rebus sic stantibus* in this case is that Muar Cottage is a dwelling house and therefore should be valued as a dwelling house, much the same way as Jelai and Berinchang are.

In the present case, there is the uncontroverted evidence of the General Manager of the Perbadanan, Lodin bin Wok Kamaruddin, who stated in his affidavit sworn on July 10, 1978 that:—

"... Muar Cottage can fetch a monthly rental of $1,500 to $1,600 as there have been several enquiries made at the Perbadanan Kemajuan Bukit Fraser office from government and statutory bodies as well as private companies, enquiring as to whether there are holidays bungalows similar to that of the said Muar Cottage for long lease in Fraser's Hill at a rental of about $1,500 per month. I further wish to add that the Perbadanan Kemajuan Bukit Fraser is prepared to aid the appellant herein in obtaining a tenant for the said Muar Cottage at the approximate rental of $1,500 per month."

This evidence is highly relevant. The existence of demand for Muar Cottage for higher rental is admissible and quite correctly taken into consideration by the respondent. (*Robinson Brothers (Breweries) Ltd.* v. *Houghton & Chester-le-Street Assessment Committee*[1]). The appellant has every right not to let the Muar Cottage at higher rental, but should she choose to do so at a lower rental, she cannot say that the property should be assessed at the actual rental received by her. This is certainly not the law and certainly contrary to the definition of annual value in section 2. The rent actually paid is not necessarily the measure of annual value (*Poplar Assessment Committee* v. *Roberts*[2]). The question is what is the

estimated gross rent which a hypothetical tenant by the higgling of market is prepared to pay for the Muar Cottage. On the evidence before me, my answer is certainly not $4,200. I therefore hold that failure on the part of the respondent to assess Muar Cottage at $4,200 is not contrary to the provisions of the Town Board Enactment.

The next question I have to consider is whether the respondent is acting contrary to the Town Board Enactment in assessing Muar Cottage at $17,400. Here the appellant's contention is simply based on the actual rent received. I cannot accept that this is correct in law in view of the evidence of demand for the premises at higher rental and its comparison with Jelai and Berinchang. However, counsel for the appellant relied strongly on *Tiong Hin Realty Sdn. Bhd.* v. *Chairman, Majlis Bandar, Kuantan,*[3] as an authority for the proposition that actual rent received should be the annual value of Muar Cottage. In my judgment the *ratio decidendi* in that case is of limited application and purely confined to the facts in that case. The case does not lay down any new principle, but merely the application of facts in that case to the principle already established. What had happened was that Mr. Justice Syed Othman rejected the contention that the property in question was in similar economic situation as the properties with which the former was compared, though the learned judge held they were physically similar. This is clear from the following passage of the judgment at page 213:—

"While the properties may be similar, they are, in my view, not in similar economic sites envisaged by Scott L.J.'s second principle. All the areas taken into account particularly the area in which the properties referred to in Jalan Besar are situated, are recently built-up; the roads are wide, and they all look new. They are clearly in different economic sites. The property in question is in the old part of the town where generally the buildings look shabby and out of this era. The valuation officer also does not appear to have regard to the fact that the property in question is along the row of shop houses, the valuation of most of which is what had been the value of the property before it was burnt down i.e. $900."

Thus, having rejected the property in question as being in similar economic situation, the learned judge accepted the actual rent received as the annual value because he said "the appellant has adduced incontrovertible evidence as to rent which he really gets from the property", and "the Town Council itself has accepted that $280 is the real rent". Thus, it is clear that the facts in that case are not the same as in our present case. In the instant case, I accept that the comparison of Jelai and Berinchang with Muar Cottage as being in similar economic situation, and I also accept the evidence of Lodin bin Wok Kamaruddin, the General Manager of the Perbadanan, that there are demands for Muar Cottage at $1,500 or $1,600 per month on a yearly basis and that the Perbadanan is prepared to assist the appellant to have the property leased on that rental. In view of these facts, I cannot see how the case of *Tiong Hin Realty Sdn. Bhd.* can assist the appellant. That being the case, I can find nothing which could justify me in interfering with the respondent assessing Muar Cottage at $17,400 instead of $4,200.

Hence I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Aziz & Mazlan.*

CHANG KHEE CHIEN & ANOR. v. PUBLIC PROSECUTOR

[R.Cr.J. (Ajaib Singh J.) March 14, 1979]
[Seremban — Criminal Revision No. 4 of 1979]

Criminal Law and Procedure — Bail — Presence of surety — Whether a mandatory requirement under the Criminal Procedure Code.

The two accused in this case were charged under section 324 of the Penal Code and were released on bail in the sum of $500 with one surety. There were several postponements of their case and on each occasion the two accused had duly appeared in court.

When the case was mentioned again the court granted a final adjournment at the request of the prosecution. The two sureties who had signed the bail bond for the attendance of the two accused were not present in court and because of their absence the learned Magistrate would not release the two accused and ordered them to be remanded.

Held: it is not necessary for any person who stands as a surety for the attendance and appearance of an accused released on bail to be personally present himself in court on each and every occasion that the accused has to attend court under the terms of the bail bond to answer the charge which is preferred against him.

Case referred to:-

(1) *Public Prosecutor* v. *Tanggaah (No. 2)* [1972] 1 M.L.J. 223.

CRIMINAL REVISION.

Vincent Paul Raj for the applicants.

Suriyadi bin Halim Omar (Deputy Public Prosecutor) for the respondent.

Ajaib Singh J. (delivering oral judgment): It is not necessary for any person who stands as a surety for the attendance and appearance of an accused released on bail to be personally present himself in court on each and every occasion that the accused has to attend court under the terms of the bail bond to answer the charge which is preferred against him. In accordance with the provisions of the bail bond which is prescribed in the Criminal Procedure Code a surety gives an undertaking that the accused shall attend court to answer the charge on the date specified in the bail bond and that he shall continue so to attend until otherwise directed by the court. But nowhere is it stated in the bail bond or in any provision in the Criminal Procedure Code relating to the granting of bail that the surety must also be present himself when the accused is required to attend court.

The two accused in this case were charged in the Magistrate's Court under section 324 of the Penal Code and were released on bail in the sum of $500 with one surety each. There have been several postponements of their case and on each occasion the two accused have duly appeared in court. When the case was mentioned again this morning the court granted a final adjournment at the request of the prosecution. The two sureties who had signed the bail bond for the attendance of the two accused were not present in court and because of their absence the learned Magistrate would not release the two accused and ordered them to be remanded to custody.

The learned Magistrate was clearly wrong in making this order of remand. Both the accused had appeared in court whenever they were previously required to do so and there was no suggestion now by